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United States of America

IN THE DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA

Plaintiff,

v.

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, in personam,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIMS,
THIRD-PARTY COMPLAINT, AND CLAIM
IN INTERVENTION.

FILED

DISTRICT COURT OF GUAM

NOV 13 2006 *nbo*

MARY L.M. MORAN
CLERK OF COURT

Civil No. 06-00011

IN ADMIRALTY

REPLY OF UNITED STATES
TO COUNTERCLAIMS OF
MARWAN AND FIVE SEAS;
CERTIFICATE OF SERVICE

REPLY OF UNITED STATES TO
COUNTERCLAIMS OF MARWAN AND FIVE SEAS 1

CIVIL NO. 06-00011

1 The Reply of the United States to the counterclaims of defendants MARWAN
2 SHIPPING & TRADING CO. ("Marwan"), and FIVE SEAS SHIPPING CO., LLC ("Five
3 Seas"), admits, denies, and alleges on information and belief as follows:

4 1. Paragraph 1 alleges matters of law to which no response is required. To the
5 extent that a response would be required, denies the allegations of Paragraph 1, except admits
6 and alleges that this is a case of admiralty and maritime jurisdiction within the meaning of
7 Rule 9(h) of the Federal Rules of Civil Procedure and that the United States of America has
8 waived its sovereign immunity from suit and consented to be sued herein, if at all, only
9 pursuant to the provisions of the Suits in Admiralty Act, 46 U.S.C. §§ 741-752, or, dependent
10 upon the facts, the Public Vessels Act, 46 U.S.C. §§ 781-790, which incorporates the
11 consistent provisions of the Suits in Admiralty Act, 46 U.S.C. §§ 741-752.

12 2. Denies the allegations of Paragraph 2 for lack of knowledge and information,
13 except admits and alleges that at all relevant times Marwan had a place of business in the
14 United Arab Emirates, that it was doing business in the United States and Guam and within
15 this district and within the jurisdiction of this Court, by and through its ownership and/or
16 operation and/or management and/or demise chartering and/or control of M/V AJMAN 2
17 with respect to the matters sued upon herein.

18 3. Denies the allegations of Paragraph 2 for lack of knowledge and information,
19 except admits and alleges that at all relevant times Five Seas had a place of business in the
20 United Arab Emirates, that it was doing business in the United States and Guam and within
21 this district and within the jurisdiction of this Court, by and through its ownership and/or
22 operation and/or management and/or demise chartering and/or control of M/V AJMAN 2
23 with respect to the matters sued upon herein.

24 4. Denies the allegations of Paragraph 4, except admits and alleges that at all
25 relevant times the Dept. of Homeland Security, United States Coast Guard, was and is an
26 agency of the United States and has certain authority and discretion established by law with
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1 respect to, *inter alia*, pollution prevention and mitigation, environmental protection, port
2 security, and public and environmental safety pertaining to the Port of Apra, Guam, and,
3 further, the navigable waters, adjoining shorelines, and exclusive economic zone of the
4 United States.

5 **ANSWERING THE ALLEGATIONS OF THE FIRST CAUSE OF ACTION**
6 **(Alleged Negligence Against the United States)**

- 7 5. Denies the allegations of Paragraph 5.
8 6. Denies the allegations of Paragraph 6.
9 7. Denies the allegations of Paragraph 7.
10 8. Denies the allegations of Paragraph 8.
11 9. Denies the allegations of Paragraph 9.

12 **ANSWERING THE ALLEGATIONS OF THE SECOND CAUSE OF ACTION**
13 **(Alleged Violation of the International Law of the Sea)**

- 14 10. Denies the allegations of Paragraph 10.
15 11. Denies the allegations of Paragraph 11.
16 12. Denies the allegations of Paragraph 12.

17 **ANSWERING THE ALLEGATIONS OF THE THIRD CAUSE OF ACTION**
18 **(Alleged Conversion of Property)**

- 19 13. Denies the allegations of Paragraph 13.
20 14. Denies the allegations of Paragraph 14.
21 15. Denies the allegations of Paragraph 15.

22 AS AND FOR A FIRST AFFIRMATIVE AND
23 COMPLETE DEFENSE, THE UNITED STATES
24 **ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:**

25 16. The Counterclaims of Marwan and Five Seas fail to state claims upon which
26 relief can be granted.

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REPLY OF UNITED STATES TO
COUNTERCLAIMS OF MARWAN AND FIVE SEAS 3

CIVIL NO. 06-00011

1 AS AND FOR A SECOND AFFIRMATIVE AND
2 COMPLETE DEFENSE, THE UNITED STATES
3 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

4 17. If Marwan and Five Seas sustained injuries and damages by reason of the
5 matters alleged in the Counterclaims, which is denied, then said injuries and damages were
6 caused in whole or in part by the acts of third parties and were not caused or contributed to
7 in any manner by any actions or fault of the United States of America, its officers, agents,
8 vessels, crew, servants, employees or others for whom it was responsible.

9 AS AND FOR A THIRD AFFIRMATIVE AND
10 COMPLETE DEFENSE, THE UNITED STATES
11 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

12 18. If Marwan and Five Seas sustained injuries and damages by reason of the
13 matters alleged in the Counterclaims, which is denied, then said injuries and damages were
14 caused in whole or in part by said parties' own actions and were not caused in any manner
15 by any actions or fault of the United States of America, its officers, agents, vessels, crew,
16 servants, employees or others for whom it was responsible.

17 AS AND FOR A FOURTH AFFIRMATIVE AND
18 COMPLETE DEFENSE, THE UNITED STATES
19 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

20 19. The Court lacks subject matter jurisdiction over the Counterclaims.

21 AS AND FOR A FIFTH AFFIRMATIVE AND
22 COMPLETE DEFENSE, THE UNITED STATES
23 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

24 20. The Court lacks subject matter jurisdiction over the Counterclaims since said
25 Counterclaims solely allege matters of discretionary functions and acts for which the United
26 States of America has not waived sovereign immunity and consented to be sued.

1 AS AND FOR A SIXTH AFFIRMATIVE AND
2 COMPLETE DEFENSE, THE UNITED STATES
3 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

4 21. The Court lacks subject matter jurisdiction over the Counterclaims since said
5 Counterclaims solely allege matters of political questions for which the United States of
6 America has not waived sovereign immunity and consented to be sued.

7 AS AND FOR A SEVENTH AFFIRMATIVE AND
8 COMPLETE DEFENSE, THE UNITED STATES
9 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

10 22. The Court lacks subject matter jurisdiction over the Counterclaims since said
11 Counterclaims solely allege matters which are subject to the Constitutional doctrine of
12 separation of powers for which the United States of America has not waived sovereign
13 immunity and consented to be sued.

14 AS AND FOR AN EIGHTH AFFIRMATIVE AND
15 COMPLETE DEFENSE, THE UNITED STATES
16 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

17 23. The Court lacks subject matter jurisdiction over the Counterclaims since said
18 Counterclaims solely allege law enforcement matters for which the United States of America
19 has not waived sovereign immunity and consented to be sued.

20 AS AND FOR A NINTH AFFIRMATIVE AND
21 COMPLETE DEFENSE, THE UNITED STATES
22 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

23 24. The Counterclaims are barred pursuant to estoppel.

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1 AS AND FOR A TENTH AFFIRMATIVE AND
2 COMPLETE DEFENSE, THE UNITED STATES
3 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

4 25. The Counterclaims are barred pursuant to waiver.

5 AS AND FOR AN ELEVENTH AFFIRMATIVE AND
6 COMPLETE DEFENSE, THE UNITED STATES
7 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

8 26. Marwan and Five Seas failed to mitigate their damages, which claims of
9 damages and claims of liability upon which they are based are fully denied by the United
10 States.

11 AS AND FOR A TWELFTH AFFIRMATIVE AND
12 PARTIAL DEFENSE, THE UNITED STATES
13 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

14 27. To the extent Marwan and Five Seas seek interest on their claims, which
15 claims are denied, any such prayer for interest would be subject to the provisions and
16 limitations of the Public Vessels Act, 46 U.S.C. §§ 781-790, which incorporates the
17 consistent provisions of the Suits in Admiralty Act, 46 U.S.C. §§ 741, *et seq.*, and not
18 otherwise.

19 AS AND FOR A THIRTEENTH AFFIRMATIVE AND
20 PARTIAL DEFENSE, THE UNITED STATES
21 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

22 28. Any claim for attorney's fees is barred since the United States has not waived
23 its sovereign immunity for such claims in this admiralty action.

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1 AS AND FOR A FOURTEENTH AFFIRMATIVE
2 DEFENSE, THE UNITED STATES

3 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

4 29. Marwan's and Five Seas' claims of damages, which claims of damages and
5 claims of liability upon which they are based are fully denied by the United States, are
6 subject to set-off and offset.

7 AS AND FOR A FIFTEENTH AFFIRMATIVE
8 DEFENSE, THE UNITED STATES

9 ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

10 30. Marwan's and Five Seas' claims of damages, which claims of damages and
11 claims of liability upon which they are based are fully denied by the United States, are
12 subject to recoupment.

13 WHEREFORE, the United States of America prays as follows:

14 1. That Marwan's and Five Seas' Counterclaims and action against the United
15 States be dismissed with prejudice and with all costs;

16 2. That the United States of America be granted judgment and damages against
17 all defendants, including Marwan and Five Seas, pursuant to the Complaint of the United
18 States of America herein, including payment of interest, costs, disbursements, and attorneys'
19 fees;

20 3. The United States of America expressly reserves the right to amend this Reply
21 to Counterclaims, as may be necessary;

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28 REPLY OF UNITED STATES TO
COUNTERCLAIMS OF MARWAN AND FIVE SEAS 7

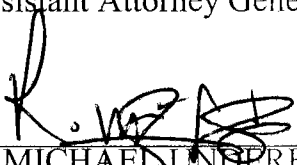
CIVIL NO. 06-00011

1 4. For such other relief as the Court deems just and proper in the premises.

2 Dated: November 6, 2006.

LEONARDO M. RAPADAS
United States Attorney
MIKEL W. SCHWAB
Assistant U.S. Attorney

PETER D. KEISLER
Assistant Attorney General

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United States Coast Guard
Attorneys for Plaintiff United States of America

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 6, 2006, I served a copy of the foregoing
Reply of the United States to Counterclaims of Marwan and Five Seas and Certificate of
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VERONICA GARNER

REPLY OF UNITED STATES TO
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